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Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, and)
Southwestern Bell Communications Services,)
Inc. d/b/a Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)

CC Docket No. 00-4

**COMMENTS OF
Z-TEL COMMUNICATIONS, INC.**

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Z-TEL COMMUNICATIONS, INC.**

Z-Tel Communications, Inc. ("Z-Tel"), by its attorneys, hereby submits its comments in response to the Commission's Public Notice (DA-00-37) in the above-captioned proceeding. The Public Notice invites interested parties to comment on the Application of SBC Communications Inc. *et al.* (collectively "SWBT") to provide in-region, interLATA services in the State of Texas, pursuant to section 271 of the Communications Act of 1934, as amended ("Act").

I. INTRODUCTION AND SUMMARY

Z-Tel is a Tampa, Florida-based integrated communications provider that offers local, long-distance, and enhanced services to residential consumers. With Z-Tel's service offering, Texas consumers receive a bundled package of long distance, unlimited local calling, voicemail, caller ID, "follow-me," and a number of other enhanced services. Consumers also may purchase dial-up Internet access as part of their Z-Tel service. In December of 1999, Z-Tel launched its residential service offering in Waco and Corpus Christi, Texas, and Z-Tel plans to make a similar offering available to consumers throughout the SWBT service territory in Texas during the first half of 2000.

Z-Tel provides local exchange and exchange access services using the combination of unbundled network elements (“UNEs”) known as the UNE Platform, which the Commission has described as a combination of the unbundled loop, switching, and transport network elements.¹ Z-Tel provides the long distance and enhanced services portions of its package. Z-Tel first began providing its integrated local exchange, long distance, and enhanced services product in New York during June of 1999, and at year end, Z-Tel had over 50,000 residential customers. Z-Tel expects similar success in the Texas residential market.

Because Z-Tel began providing local exchange service in Texas only recently, Z-Tel has limited practical experience with SWBT’s operations support systems and UNE products.² In preparation for its service roll out, Z-Tel has worked closely with its SWBT account manager since August 1999, and Z-Tel is pleased to report that its experience with its account manager has been consistently positive. Z-Tel does note, however, that SWBT’s interconnection agreement adoption policy has foreclosed Z-Tel from obtaining network element arrangements that SWBT is providing to other competitive local exchange carriers (“LECs”). This policy has the effect of violating the competitive checklist’s requirement regarding nondiscriminatory access to network

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, ¶ 12 (rel. Nov. 5, 1999).

² Some of SWBT’s practices do concern Z-Tel, however. For example, SWBT’s nonrecurring charges for migrating a local exchange customer to Z-Tel’s service is approximately 10 times that of Bell Atlantic’s rate in New York. As another example, SWBT will not permit competitive carriers to use UNEs for transporting and terminating intraLATA toll traffic, even though this is the most cost-effective means of delivering this traffic in some cases. In New York, by contrast, Z-Tel is able to use UNE offerings for delivering intraLATA toll traffic.

elements.³ In addition, SWBT's interconnection agreement adoption policy runs contrary to the public interest.⁴ Z-Tel also notes that SWBT denies requesting carriers access to the full set of features, functions, and capabilities of local switching by failing to make available a concrete custom line class code ("LCC") offering in violation of the competitive checklist.⁵

II. SWBT'S INTERCONNECTION AGREEMENT ADOPTION POLICY VIOLATES THE NONDISCRIMINATION REQUIREMENTS OF THE SECTION 271 CHECKLIST AND CONTRAVENES THE PUBLIC INTEREST

Section 252(i) of the Act provides that a "local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved [under section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."⁶ The Commission has recognized this provision as "the primary tool of the 1996 Act for preventing discrimination under section 251."⁷

³ 47 U.S.C. § 271(c)(2)(B)(ii).

⁴ *Id.*, § 271(d)(3)(C).

⁵ *Id.* § 271(c)(2)(B)(vi).

⁶ *Id.* § 252(i).

⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 1297 (1996) ("*First Report and Order*") (subsequent history omitted).

**A. SWBT's Interconnection Agreement Adoption Policy Violates
the Commission's Rules**

In adopting implementing rules for the Act's interconnection agreement adoption provision, section 252(i), the Commission concluded that, "incumbent LECs must permit third parties to obtain access under section 252(i) to any individual interconnection, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252."⁸ In other words, so long as an incumbent LEC is providing an interconnection, service, or network element arrangement to a competitive LEC under a section 252 interconnection agreement, the incumbent LEC is required to make those same terms and conditions available to other requesting competitive LECs. Although SWBT's Application purports to show that SWBT is in compliance with the Commission's section 252(i) rules, its actual practices demonstrate that SWBT unlawfully is foreclosing competitive LECs from exercising their section 252(i) rights.

In its Application, SWBT suggests that it provides competitive LECs with generous opportunities to adopt the terms and conditions of interconnection agreements entered into by SWBT with other requesting carriers. For example, SWBT states that "[i]f a CLEC did not initially seek a particular checklist item in its negotiations with SWBT, the CLEC may obtain the item from another Texas PUC-approved agreement ..., [o]r, at its option, the CLEC may adopt

⁸ *Id.*, ¶ 1314.

the entirety of another Texas PUC-approved agreement.”⁹ Z-Tel’s experience attempting to adopt the Texas PUC-approved agreement between SWBT and AT&T demonstrates that SWBT’s practices effectively prevent competitive LECs from exercising their rights under section 252(i).

In August of 1999, Z-Tel submitted a request to SWBT to adopt the Texas PUC-approved interconnection agreement between SWBT and AT&T. After several weeks of discussion, SWBT informed Z-Tel that:

With respect to your renewed request to [adopt] the SWBT/AT&T Interconnection Agreement, as previously discussed, it is [SWBT’s] position that SWBT is only required to make agreements available for adoption for a reasonable period of time and an Agreement is not available for adoption once it has expired or has been noticed for termination. AT&T has been noticed for termination and renegotiation in Texas. Therefore, it is our position that the SWBT/AT&T Texas Interconnection Agreement is no longer available for adoption. The AT&T Agreement requires 180 days notice for termination. We are already in that notice period. Therefore, we do not believe it would be appropriate for there to be further [adoptions] into this Agreement which has already been made available for a reasonable time and has been terminated under the requisite notice terms.¹⁰

SWBT’s position that a requesting carrier may not adopt a state commission-approved interconnection agreement noticed for termination contravenes section 252(i) and

⁹ *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-4, Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas, 71 (filed Jan. 10, 2000).

¹⁰ Letter from Amy Wagner, Counsel to SWBT, to Michael B. Hazzard, Lawler, Metzger & Milkman, LLC, Counsel to Z-Tel, dated Sept. 21, 1999, attached hereto as Tab A.

demonstrates that SWBT is not in compliance with its competitive checklist obligation to provide nondiscriminatory access to UNEs.¹¹

The most straightforward reading of section 252(i) requires incumbents, such as SWBT, to permit requesting carriers to adopt state commission-approved interconnection agreements at any point in the term of an agreement up until the actual expiration of the agreement. Z-Tel is not suggesting that SWBT or any other incumbent should be required to permit competitors to opt into additional full terms of an agreement, such that an incumbent could be required to offer the terms of a single agreement in perpetuity. Rather, Z-Tel submits that section 252(i) enables a competitive LEC to adopt an interconnection agreement upon the same terms and conditions – including ultimate expiration date – as provided to the underlying competitor. SWBT's interpretation of section 252(i) would allow the negotiating parties to evade the Act's "primary tool" for preventing discrimination under section 251 by establishing long notice periods for terminating agreements.

In contrast, reading section 252(i) to require an incumbent to allow competitive LECs to exercise section 252(i) so long as the incumbent is providing an interconnection, service, or network element arrangement to a competitive LEC under a section 252 interconnection agreement is more consistent with the statutory framework, and best serves the goals of the statute by promoting additional competition. Smaller carriers, such as Z-Tel, lack the resources and bargaining power of larger carriers, such as AT&T, necessary to negotiate or arbitrate the

¹¹ With regard to SWBT's statement that it need only make interconnection agreements available for a reasonable time, Z-Tel notes that the Commission's discussion of a "reasonable time" for interconnection agreement adoption "addresses incumbent LEC concerns over technical incompatibility." *First Report and Order*, ¶ 1319.

most effective interconnection and UNE arrangements possible. Section 252(i) promotes additional entry by allowing small carriers to stand in the shoes of larger carriers. SWBT's interconnection agreement adoption policy thwarts section 252(i) by substantially limiting the ability of competitive LECs to avail themselves of the best possible interconnection arrangements that SWBT is providing to another competitor.

As noted, SWBT refused Z-Tel's request to adopt the existing interconnection agreement between SWBT and AT&T in Texas. On January 22, 2000, the term of the SWBT/AT&T agreement expired, however, AT&T continues to operate under the SWBT/AT&T Agreement on a month-to-month basis while the parties negotiate a successor agreement. In Z-Tel's view, it should have the ability to operate under the SWBT/AT&T Agreement so long as AT&T is receiving service from SWBT under that agreement. Once SWBT and AT&T enter into a new agreement, Z-Tel should have the ability to move seamlessly to the new agreement. This interpretation of section 252(i) serves the public interest by permitting competitors, such as Z-Tel, to obtain the terms and conditions of another effective agreement until such time as that agreement is wholly terminated or superseded.

**B. SWBT's Interconnection Agreement Adoption Policy Has
Resulted in Discrimination that Violates the Competitive
Checklist and Contravenes the Public Interest**

Under section 252(i), SWBT is required to provide any individual interconnection, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252. In denying Z-Tel's request to adopt the SWBT/AT&T interconnection agreement, SWBT forced Z-Tel to operate under a different interconnection

agreement. Z-Tel entered into the Texas 271 Agreement, also known as the T2A, which contains various network element arrangements that, in Z-Tel's view, are inferior to those in the SWBT/AT&T Agreement. By denying Z-Tel access to the SWBT/AT&T Agreement – under which AT&T continues to receive service – SWBT has violated, and continues to violate, the competitive checklist's requirement that SWBT provide nondiscriminatory access to network elements.

For example, the SWBT/AT&T Agreement provides carriers with substantially more robust network element combinations than does the SWBT/Z-Tel Agreement. The SWBT/AT&T agreement requires SWBT to “provide AT&T access to the unbundled Network Elements provided for [in the Agreement], including combinations of Network Elements, without restriction.”¹² In the SWBT/Z-Tel Agreement, by contrast, “SWBT may elect to not combine UNEs that are not already combined” in central offices “where there are four (4) or more collocated [competitive LECs] for which SWBT has provided UNEs.”¹³ While AT&T and others operating under the SWBT/AT&T agreement may obtain unrestricted access to UNE combinations, Z-Tel may be required to collocate equipment to “combine” UNEs to provide new lines to consumers. Such a restriction on Z-Tel's ability to obtain UNE combinations places Z-Tel at substantial disadvantage to carriers operating under the SWBT/AT&T Agreement.

¹² Interconnection Agreement – Texas between Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc., Attachment 6, § 2.4 (“SWBT/AT&T Agreement”).

¹³ Interconnection Agreement – Texas between Southwestern Bell Telephone Company and Z-Tel Communications, Inc., Attachment 6, § 14.3.3 (“SWBT/Z-Tel Agreement”).

As another example, a competitive LEC purchasing UNEs out of the SWBT/AT&T Agreement is assumed to be the provider of exchange access services to its local exchange customers.¹⁴ Under the SWBT/Z-Tel Agreement the opposite is true – SWBT is the default provider of exchange access services associated with a competitive LEC's local exchange customers.¹⁵ Z-Tel may become the provider of exchange access services associated with its local exchange end users only after the interexchange carrier and Z-Tel work out an alternative arrangement with SWBT, separate from the underlying interconnection agreement.¹⁶

At bottom, by refusing to allow Z-Tel to exercise its section 252(i) rights to adopt the SWBT/AT&T Agreement, SWBT has denied Z-Tel access to network element arrangements that SWBT provides to another carrier in violation of section 252(i) and the competitive checklist's requirement that SWBT provide nondiscriminatory access to UNEs.¹⁷ Therefore, this Application for in-region, interLATA authority fails to satisfy the competitive checklist and grant of this Application would not serve the public interest.

¹⁴ SWBT/AT&T Agreement, Attachment 6, § 2.20 ("SWBT/AT&T Agreement") ("When AT&T purchases unbundled Network Elements to provide interexchange services or exchange access services for intraLATA traffic originated by or terminating to AT&T local service customers, SWBT will not collect access charges from AT&T or other IXC's except for charges for exchange access transport services that an IXC elects to purchase from SWBT.").

¹⁵ SWBT/Z-Tel Agreement, Attachment 6, Appendix – Pricing, § 5.2.2.2.1.2.1 (noting that Z-Tel may use UNEs to provide exchange access services "[w]hen the PIC agrees" to such an arrangement).

¹⁶ *Id.* SWBT's interpretation of switched access under T2A calls into question whether Z-Tel can effectively purchase shared transport as required under the Act.

¹⁷ 47 U.S.C. § 271(c)(2)(B)(ii).

III. SWBT DENIES REQUESTING CARRIERS ACCESS TO THE FULL SET OF FEATURES, FUNCTIONS, AND CAPABILITIES OF LOCAL SWITCHING BY FAILING TO MAKE AVAILABLE A CONCRETE LCC OFFERING

In order to satisfy the competitive checklist's unbundled local switching requirement, SWBT must demonstrate that it provides all of the features, functions, and capabilities of the switch, including any technically feasible customized routing functions.¹⁸ To perform customized routing functions, Z-Tel utilizes custom LCCs provided by Bell Atlantic in New York, and Z-Tel similarly would like to utilize LCCs to perform customized routing in Texas. However, SWBT has no available LCC offering in Texas, and this prevents Z-Tel from utilizing a technically feasible means of routing its traffic in violation of the unbundled local switching provision of the competitive checklist.¹⁹

Under the T2A agreement that Z-Tel has adopted, SWBT will provide pricing information for LCCs to a competitive LEC only after going through a Special Request Process and potentially a state commission rate case. As provided for in the agreement:

In the event a CLEC specifically requests an LCC in any local switch where AIN is implemented, SWBT shall provide a forward-looking cost estimate to the CLEC through the Special Request Process, provided that such LCC needs to be developed to accommodate the CLEC's customized routing requirement or calling scope. CLEC will pay the costs for implementing the request, provided that, if CLEC does not agree with SWBT's proposed charges for LCC customized routing, SWBT will submit its costs and proposed prices to the Commission for approval in accordance with TELRIC requirements, and CLEC will only be required to pay the prices approved by the Commission.²⁰

¹⁸ *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, Inter-LATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20722-24 (1998).

¹⁹ 47 U.S.C. § 271(c)(2)(B)(vi).

²⁰ SWBT/Z-Tel Agreement, Attachment 6, § 5.2.4.3.

This effectively forecloses Z-Tel from obtaining a technically feasible means of performing customized routing. Through this “offering,” SWBT is permitted to set its own rate for allowing a competitive LEC to utilize LCC routing, and only if this rate is disputed will a TELRIC-based rate be established. In contrast to this procedure, Z-Tel notes that in New York, Bell Atlantic has in place a custom LCC product that is generally available through both New York Public Service Commission-approved interconnection agreements and tariffs.

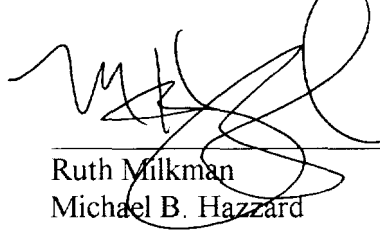
Given the uncertainty surrounding its provision of LCCs for customized routing, SWBT cannot demonstrate that it “is providing” this means of routing in accordance with the Commission’s section 271 standard.²¹ Until such time as SWBT establishes a concrete LCC offering in Texas, its unbundled switching UNE will not comport with the competitive checklist’s unbundled switching requirement, as defined by the Commission.

²¹ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Service in Michigan*, CC Docket No. 97-137, 12 FCC Rcd 20543, ¶ 108. Z-Tel also notes that any assertion by SWBT that it has not developed a customized LCC offering due to a lack of demand is unsatisfying. It is impossible to determine the extent to which demand exists without the availability of a *bona fide* offering. In addition, Z-Tel notes that Bell Atlantic has a custom LCC offering in New York, and carriers, including Z-Tel, utilize this offering.

IV. CONCLUSION

For the reasons set forth herein, the Commission should deny SWBT's Application for in-region, interLATA authority in Texas pursuant to section 271 of the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ruth Milkman', is written over a horizontal line.

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Dated: January 31, 2000

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TAB A

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September 21, 1999

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Re: SWBT/Z-Tel Communication, Inc.'s Negotiations for Texas Interconnection Agreement

Dear Mr. Hazzard:

This is in response to your September 7, 1999 letter to Errol Phipps, counsel for SWBT. I will be the SWBT attorney handling this account going forward, so please direct any future correspondence to me.

In your letter, you advised that Z-Tel would like to adopt the terms of the "T2A" as soon as it becomes available, but in the interim, would like to operate under the SWBT/AT&T Texas Interconnection Agreement.

With respect to your renewed request to MFN into the SWBT/AT&T Texas Interconnection Agreement, as previously discussed, it is our position that SWBT is only required to make agreements available for adoption for a reasonable period of time and an Agreement is not available for adoption once it has expired or been noticed for termination. AT&T has been noticed for termination and renegotiations in Texas. Therefore, it is our position that the SWBT/AT&T Texas Interconnection Agreement is no longer available for adoption. The AT&T Agreement requires 180 days notice for termination. We are already in that notice period. Therefore, we do not believe it would be appropriate for there to be further MFNs into this Agreement which has already been made available for a reasonable time and has been terminated under the requisite notice terms.

In any event, we anticipate that the T2A will be available in the very near future, even before an MFN into another Agreement could be prepared, filed and approved by the Texas PUC.

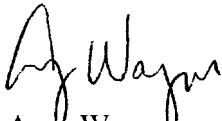
In your letter, you state that SWBT has represented that Z-Tel could continue the interconnection process up to the point of submitting an actual customer order without an

Mr. Hazzard
September 21, 1999
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interconnection agreement. We believe that Z-Tel may have misunderstood SWBT's statements in this regard. SWBT has agreed to arrange the implementation team meetings to begin working through the processes for interconnection and to address the issues associated with line class codes on UNE switch ports. However, a signed interconnection agreement is necessary before a CLEC can attend training and before SWBT can set up databases with the CLEC's specific information (e.g., operator services branding and rate tables, account profile, etc.). In the interim, however, SWBT will continue to work with Z-Tel in implementation subcommittee meetings as discussed in our initial meeting.

We believe this addresses all of the issues raised in your September 7, 1999 letter. Please contact me if you have any additional questions.

Yours very truly,



Amy Wagner